

PREHEARING CONFERENCE
STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

IN THE MATTER OF:) DOCKET NO. 98-AFC-4
)
APPLICATION FOR)
CERTIFICATION FOR)
THE AMENDED SUNRISE)
POWER PROJECT)
_____)

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
FIRST FLOOR HEARING ROOM B
SACRAMENTO, CALIFORNIA

MONDAY, OCTOBER 30, 2000

10:00 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

CONTRACT NO: 170-99-001

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HEARING OFFICER

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STAFF

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Ms. Caryn Holmes, Senior Staff Counsel

Mr. Mark S. Pryor, Siting Project Manager

Mr. Rick York

APPLICANT

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1 PROCEEDINGS

2 HEARING OFFICER FAY: Good morning. This is a
3 prehearing conference in the Sunrise Power Project as
4 amended. And we are in anticipation of holding an
5 evidentiary hearing on November the 7th, and we just want
6 to informally work out the details so we can use our time
7 as effectively as possible on November 7th.

8 I see present the representative for the
9 applicant Sunrise for the staff and for CURE.

10 Is any other party represented here today?

11 MR. GRATTAN: I'd like to introduce gentlemen
12 representing Edison Mission Energy. And first is counsel
13 from Latham & Watkins, Robert Wyman, and Lindell Blair
14 from Edison Mission Energy, Victor Yamada from Edison
15 Mission Energy.

16 HEARING OFFICER FAY: Welcome.

17 MR. GRATTAN: And the rest are the usual
18 suspects.

19 HEARING OFFICER FAY: Right. We know everybody.
20 And I think that will help us. Most of your witnesses
21 have already been sworn. And, in any case, I understand
22 that you're agreeable to submitting the testimony that's
23 cited in your prehearing conference statement, for the
24 most part, on declarations.

25 MR. GALATI: Yeah, that's correct.

1 HEARING OFFICER FAY: And let me ask the
2 applicant, what areas do you envision that we might need
3 to adjudicate?

4 MR. GALATI: There's a possibility of air
5 quality. There's a disagreement, at this point, but not a
6 disagreement that we think we couldn't work out with
7 staff, and we're going to work towards that end.

8 In addition, there was a new biology condition
9 added and we just needed some clarification, and we may
10 not have a problem with that condition. However,
11 specifically, that portion that we have a problem with is
12 the requirement to install bird deflectors on the portion
13 of the La Paloma line that is already constructed.

14 HEARING OFFICER FAY: Is this a new requirement?

15 MR. GALATI: This is a new requirement.

16 MR. GRATTAN: It's Bio 12.

17 MR. GALATI: Then with respect to noise, we had
18 asked for a modification to a condition. It is
19 specifically Noise 6. Noise 6 has an absolute prohibition
20 on certain construction activities taking place at night.
21 And we asked that some of those construction activities be
22 limited from the prohibition and just be treated as if
23 there were -- as other noise complaints, that if there
24 were a noise complaint, then there would be mitigation or
25 the complaint would be investigated and responded to.

1 The purpose, again, for that modification and the
2 request for that modification is so that we can meet the
3 construction schedules to be on line during 2001, summer
4 peak.

5 HEARING OFFICER FAY: So just removing the hour
6 limitation, all other -- the noise levels and the
7 complaint processes would be the same?

8 MR. GALATI: Correct. And it may be that staff
9 disagreed with the way in which we modified the condition,
10 maybe not the substance. We haven't understood that yet.
11 What I did was we removed certain activities from the
12 absolute prohibition and left one activity, which was pile
13 driving, which is known to be noisy, prohibited during the
14 evening hours, but we allowed construction, concrete
15 pouring, earth moving, and I believe that was it -- steel
16 erection to be allowed during the nighttime hours.

17 Again, there is another noise condition that
18 allows complaints to be filed and set forth some
19 responsibility on the part of the applicant if it is
20 noisy. And we do need to do some construction in the
21 evening.

22 HEARING OFFICER FAY: Okay, anything else?

23 MR. GALATI: Let me, if I could, just take a
24 quick peek. We had a section on land use that we wanted
25 to discuss that wasn't a staff condition but was a

1 committee condition, dealing with the amount of funding
2 for some beautification project for the community of Derby
3 Acres, I believe.

4 HEARING OFFICER FAY: Is that just argument or do
5 you need a witness?

6 MR. GALATI: I don't believe we -- we will have a
7 witness in case the Committee has some questions on how a
8 condition that we proposed would actually work, but we
9 don't anticipate having to submit a bunch of additional
10 testimony. There's already been comments on the PMPD and
11 we may revise those comments in our testimony, but we
12 would submit it on declaration and then have a witness
13 available should the Committee need some clarification.

14 HEARING OFFICER FAY: Okay. On cultural?

15 MR. GALATI: On cultural resources, to refresh
16 your memory, we asked in our application for certification
17 that the conditions be modified -- the timing of the
18 verification submittals be modified to allow a more
19 aggressive construction schedule. We've seen staff's
20 response to that and we agree that it has some merit.
21 What we would like, and one of the reasons we think we can
22 work this out, if we could get a commitment from staff
23 that the verification submittals that would be submitted
24 in the next couple of months in order to get this project
25 on line would be treated with a priority in staffing.

1 From the perspective of those verification
2 submittals, if they're put on the back burner in the order
3 in which they are filed may cause us to miss our
4 construction schedule. So we'd be willing to work with
5 staff's commitment in no modification to the verifications
6 if staff is willing to work with us to bring that project
7 construction in December.

8 The only other area that we have some dispute,
9 with what was in the FSA, is some clarification on the
10 timing of the federal approvals as well as the State
11 incidental take permit. We wanted to submit some
12 testimony clarifying the timing. The write-up indicates
13 that we would be 90 to 120 days after licensing before we
14 could get our incidental take permit, and that's not our
15 understanding, and we would provide some testimony along
16 those lines, and specifically if that CDFG is present or
17 can modify either with a letter, or if present, I think we
18 can clarify that.

19 But those are the only areas that we see. And
20 the only real area of possible adjudication is in the air
21 quality section and the bio section on --

22 HEARING OFFICER FAY: Bio from both agencies,
23 both federal and the State?

24 MR. GALATI: Well, primarily there's no
25 discussion of the biological opinion status on when it

1 would be approved, but we would provide that testimony.
2 But in the State incidental take permit section on page
3 84, the description of the timing there we'd like to
4 clarify that and more accurately represent the timing on
5 the State incidental take permit.

6 HEARING OFFICER FAY: Okay. On all of these you
7 seem to indicate, at least, a potential for resolving
8 these matters. And I'm just wondering do you have a plan
9 for getting together with staff and/or the Resources
10 Agencies, Fish and Game, Fish and Wildlife, before
11 November 7th, which is coming up awful fast?

12 MR. GALATI: Well, our initial plan and one of
13 the ideas that we were kicking around, the possibility is
14 the ability to meet right before the hearing on the air
15 quality issue. We think we can resolve that. We're
16 certainly willing to work before that time as well.

17 There is a significant dispute on a substantive
18 matter on 9 ppm versus 5 ppm. Staff's recommendation on 5
19 ppm for the second year, or if we can come in and ask for
20 an amendment, is something we can't work with. So that is
21 something that we think we can resolve if we had an
22 opportunity to discuss with staff as well as the ARB.
23 Those were specific concerns and we think we've addressed
24 them.

25 With biology, one way we can handle it is we can

1 certainly propose or I can put on the record now for staff
2 to consider is a -- the bird deflectors on the portion of
3 the line from La Paloma for us to go back and reinstall --
4 go back on an existing pole and install those bird
5 deflectors is quite expensive and difficult to do. And we
6 would ask that the portion of the existing line -- La
7 Paloma's existing line, be exempted from the requirement
8 of putting bird deflectors on.

9 HEARING OFFICER FAY: Well, you're going to have
10 a pretty full platter the morning of the 7th if you're
11 working on air quality and all these other things. I know
12 you're aware of how busy things are and just getting
13 staff's attention on these. On the other hand, if some of
14 these have a chance of resolution, it's just going to be a
15 lot more efficient to take care of them before the
16 hearing, so that we can, you know, do as little
17 adjudication as necessary on the 7th. I think everything
18 has to be finished on the 7th just as it stands.

19 MR. GALATI: Yeah.

20 HEARING OFFICER FAY: So I'd encourage you to do
21 whatever you can to get together with staff and try to
22 work out some of these details that you mentioned.

23 MR. GALATI: And, Mr. Fay, we certainly will.
24 And we think we can work those minor issues that we have
25 with the final staff assessment. We would like to say,

1 for the record, that we commend the staff for getting the
2 final staff assessment out and for focusing directly on
3 the issues and addressing specifically the conditions of
4 certification as we proposed they be modified. That was
5 very helpful for us with the review and we'd like to
6 commend staff. And we think we can continue in those same
7 veins to be able to work these issues out.

8 HEARING OFFICER FAY: Great.

9 The staff cites three areas that require major
10 revision. Can you give us an idea, Ms. Holmes of -- you
11 said you don't anticipate any cross examination. Is that
12 really likely, if you don't have resolution in those three
13 areas or would you just be presenting your position?

14 SENIOR STAFF COUNSEL HOLMES: I think, at this
15 point, we're prepared to present our position. Certainly,
16 the air quality issue is, in our opinion, fully laid out
17 in our testimony. With respect to the concern about Bio
18 12, my understanding is that that's a requirement that's
19 come about as a result of some conversation we've had with
20 US Fish and Wildlife Service about the types of
21 requirements that they are likely to impose.

22 And, as I said, I don't have information about
23 whether or not they are going to be able to tell us by the
24 7th whether or not the conditions of certification
25 proposed by staff are sufficient. We're hoping to have

1 that. I know Rick is in the room, our biologist, and
2 perhaps he can bring us up-to-date on any conversations
3 we've had with Fish and Wildlife and Fish and Game, so we
4 know that they can provide the same kinds of assurances
5 that our license will be sufficient for their purposes,
6 the same way they did last January.

7 MR. YORK: Yeah, I know they're still working on
8 the biological opinion. And I think they'll probably have
9 it done by the middle of November, but that was only
10 guessing. That's why I did not include much information
11 in my testimony about that. I didn't want to hold them to
12 something that may not be true.

13 As far as bird flight converters, I thought I
14 laid out my arguments fairly well. We had discussions
15 with the Fish and Wildlife Service in the last couple of
16 weeks and they are of the opinion that they want them on
17 all new transmission lines, including the La Paloma line
18 now that this project appears to be going to connect to
19 it. They wanted them on that entire length of that
20 transmission line.

21 COMMISSIONER MOORE: Let me ask you a question.
22 Is that proven technology? I mean, is it well documented
23 in the literature that they actually get fewer strikes or
24 accidents because of that?

25 MR. YORK: Well, a lot of the work has been done

1 in Africa, but on the large birds like Cranes and that
2 sort of thing, they are starting to add them in North
3 America now for large birds of prey, like Golden Eagles
4 and Bald Eagles. And it does appear to make that ground
5 wire, which is the top most thin wire, much more visible
6 to them.

7 So, yeah, they are being installed now in North
8 America more regularly and we've contacted the consultant
9 who is one of the main players of having this work done in
10 North America now. And they do feel that they do work, so
11 they are being installed on the Pastoria, new transmission
12 line for that project. And that was the most recent
13 project where we got the Fish and Wildlife Service to tell
14 us that they wanted them on that.

15 HEARING OFFICER FAY: That's a new transmission?

16 THE WITNESS: New.

17 HEARING OFFICER FAY: This would be a retrofit?

18 MR. YORK: For the La Paloma portion, it would be
19 a retrofit. For the new Sunrise portion to the connection
20 point at La Paloma, that would be a new transmission line.
21 La Paloma transmission line is almost complete, but it
22 will not be energized until probably next spring or
23 summer.

24 MR. GALATI: And just for clarification, our
25 position is only that portion of the retrofit. We don't

1 have a problem putting them on the new line that we're
2 building.

3 HEARING OFFICER FAY: Um-hmm. Does anybody else
4 share the retrofit on Sunrise?

5 MR. GALATI: I don't know the answer to that
6 question.

7 HEARING OFFICER FAY: I mean, the La Paloma
8 portion that's subject to verification.

9 MR. GALATI: Yeah, it's just La Paloma and us.

10 HEARING OFFICER FAY: Okay.

11 MR. GRATTAN: My question is, are these pure
12 deflectors?

13 MR. YORK: No. It's actually a -- it's something
14 that hangs down from the ground wire and it's sort of a
15 disk. And it moves. It's called a flapper is actually
16 what it's called. It doesn't make a noise, but it moves
17 in the breeze and makes that wire that's about the size of
18 a little finger much more visible. It's installed about
19 every 50 meters, and it makes -- the birds do not seem to
20 collide with the transmission lines. It's the ground
21 wire.

22 HEARING OFFICER FAY: And this is all approved by
23 PUC? This is approved for use on transmission lines?

24 MR. YORK: That's a good question. I don't know.
25 All I know is what the Fish and Wildlife Service's

1 comments were, and I tried to put those in my testimony.

2 HEARING OFFICER FAY: Presumably, we'll have some
3 indication, that we don't want to require something that
4 causes the lines to short out.

5 MR. GRATTAN: Fish and Wildlife Service is aware
6 that the La Paloma lines are currently constructed?

7 MR. YORK: Yes.

8 HEARING OFFICER FAY: I'd like, Mr. York, if you
9 would arrange some communication with Fish and Wildlife,
10 not only on getting an indication to us by the hearing as
11 to the opinions, but also on this mitigation measure. If
12 it is extremely important to them, if they feel that even
13 on this section that's already up they need it, are they
14 flexible at all in the timing of it?

15 It occurs to me that this is a very expensive
16 item, that perhaps it would be easier for the applicant to
17 stomach it. I mean the line is already up, so it's a
18 retrofit. If it occurs later in time after they're
19 generating, does that make it any easier for them to
20 manage it?

21 MR. YORK: Actually, I think it would be easier
22 to do it when it's not energized.

23 HEARING OFFICER FAY: Well, okay, I'd like to see
24 some exploration of the various positions.

25 MR. YORK: Well, my intentions are to have Fish

1 and Wildlife Service here next week.

2 HEARING OFFICER FAY: Yeah, that might be faster
3 than getting something in writing, if they just have a
4 person that could give us, you know, some indication of
5 the likelihood on the pinions and may be they can also
6 speak to this issue as well.

7 We want to explore ways to get agreement on these
8 issues, if at all possible, so that the Committee doesn't
9 have to make the call on everything.

10 Anything more on Biology?

11 Ms. Poole, jump in at any time. I don't want to
12 just bypass you.

13 MS. POOLE: I appreciate that. Most of the
14 issues that we raised have disappeared with the amendment.
15 So, as we stated in our prehearing conference statement,
16 the air quality NOV issue is really the only one that we
17 were concerned about, at this point. That, obviously,
18 disappears if that is energy -- completes its purchase of
19 the project.

20 HEARING OFFICER FAY: Okay. And back to staff
21 then on cultural, does that lend itself to --

22 SENIOR STAFF COUNSEL HOLMES: I'd have to go back
23 and talk to people. I understand that what the applicant
24 was proposing was that a commitment from staff to treat
25 their submittals with priority would be sufficient. We've

1 got seven other cases in-house that want to be treated
2 with priority over the next eight months and I don't know
3 how many that are currently in the compliance and
4 construction phase. So I can't tell you, without going
5 back and talking with the compliance people, realistically
6 what that means.

7 HEARING OFFICER FAY: Yeah. Do you have any
8 idea, Mr. Prior or Mr. Haussler, is this just a different
9 name for the same thing? If you don't give them priority,
10 but you shorten the time as they were asking originally,
11 you still have the same problem, because of the workload
12 in-house.

13 SENIOR STAFF COUNSEL HOLMES: We definitely have
14 a workload problem in-house. We'd point out that there's
15 nothing that's prevented Sunrise from making these
16 submittals now. That, in fact, they've made a number of
17 the mandatory submittals already and they could be
18 submitting these as we speak or working them as we speak,
19 and that would probably make a large part of the problem
20 go away as well.

21 HEARING OFFICER FAY: Okay.

22 MR. GRATTAN: We have, if the Chair, hearing
23 officer, are interested, we do have a representative of
24 Sunrise here that can speak to what has been submitted and
25 what will be submitted.

1 COMMISSIONER MOORE: Why don't we do that and see
2 if we can address Ms. Holmes question, her point.

3 MR. GRATTAN: One of our concerns, or a concern
4 to get the Committee's attention and management's
5 attention is on the cultural issue is, you know, the
6 staff's response to Cultural 3 indicates that 60 days
7 shouldn't be changed to 30 because these plans, we're
8 talking about cultural resource planing, are 20 pages
9 long.

10 Well, that's three days a page that they're
11 looking for. We will submit on a timely basis the plans
12 that need to be reviewed. We'll submit it prior to, well
13 prior, to certification and we just need attention.

14 HEARING OFFICER FAY: Okay. Well, --

15 COMMISSIONER MOORE: Well, let me just go to that
16 point for a second. What Ms. Holmes is raising is not
17 just a block of three days or two days here. It's the
18 sequence of it. And, in fact, if you fall out of sequence
19 because of all the other cases, especially the peakers
20 that are coming up, it may not just be that you find
21 yourself out of sync for three more days. You may find
22 that the next wave that picks you up, where there's an
23 open block is two weeks away or something else.

24 So I don't think there's any intention, at least
25 not that I've heard, to try and disenfranchise anyone in

1 this process, but it takes a tremendous amount of
2 cooperation, and I mean bilateral, trilateral cooperation
3 to make this happen. So, in that sense, I guess, John,
4 what I'm telling you is, if you're getting word from our
5 staff that says we need you to do it by Tuesday because
6 that's our open window, that's our one-day to do it, I'd
7 throw the convention of well, you guys ought to be able to
8 work faster or more efficiently or something, I'd throw
9 that one out the window. And I'd think say, Tuesday,
10 I'd -- given the environment that we're working in, I'd
11 jump on it.

12 MR. GRATTAN: We won't miss a day.

13 COMMISSIONER MOORE: I'd take it as a gift. So
14 we'll all work as hard as we can, but there is -- you
15 know, notice the other change which is happening which is
16 that the Commissioners are probably going to be alone in
17 these. We're probably -- a second member routine is
18 probably just not going to happen. There's just not
19 enough of the five of us to go around. So there you go.

20 Anyway, that's not a criticism, it's just the way
21 it is. And I have to protect my own staff, even though
22 they're independent parties, they are apart of our family,
23 so that we have to make sure they're safe, too.

24 MR. GRATTAN: Maybe Mervyn Soares can perhaps
25 walk the Committee quickly through what we have submitted

1 and what we need.

2 HEARING OFFICER FAY: While Mervyn is coming up,
3 I just want to ask everybody is there an agreement that on
4 the areas that need revision on the original application
5 from the PMPD that I think the applicant identified 15
6 topic areas?

7 MR. GALATI: Yeah. And, again, most of those
8 are --

9 HEARING OFFICER FAY: And that's a longer list
10 than staff's, so I assume there's no disagreement?

11 MR. GALATI: I don't believe that there's
12 disagreement, I just wanted the record to reflect, in
13 those areas, because we went painstakingly through the
14 PMPD and those areas where there's a finding that's made
15 toward the -- related to the cogeneration project, I
16 wanted that finding stricken or a discussion stricken.

17 So there's some minor revisions to that, but I
18 don't believe that that should prevent us from submitting
19 on declaration. It's not really a dispute on revision.
20 It's just we want the PMPD to be as complete as possible,
21 so there are certain things in, for example, hazardous
22 materials. There's not an issue on hazardous materials,
23 but there's a complete write-up that needs to be changed
24 to the PMPD. So I included that as a revision, even
25 though --

1 HEARING OFFICER FAY: I just want to be sure that
2 staff hasn't identified anything that you didn't think
3 needed revision and staff did think.

4 Apparently not.

5 MR. GALATI: I think we're in agreement that way.

6 HEARING OFFICER FAY: Good.

7 Mr. Soares.

8 MR. SOARES: Okay. Actually, I won't go through
9 every condition, unless you really want me to, but we put
10 together a spreadsheet and we've pretty much submitted a
11 major portion of all these plans and all the requirements.

12 I spoke to Nancy before this hearing and she's
13 pretty confident, as long as we get our plans in the very
14 near future, staff will support reviewing these plans and
15 getting them completed before license.

16 Her only concern was the extraneous agencies,
17 meaning the Fish and Wildlife Service and Fish and Game.
18 And the only thing I could tell there was we're working as
19 closely as possible with these two agencies to make sure
20 that the instruments that they have to provide are indeed
21 completed by the time the licensing issue or soon after
22 the licensing issue, which will allow us to go into
23 construction in early December according to our schedule.

24 COMMISSIONER MOORE: Good.

25 HEARING OFFICER FAY: That's no problem.

1 MR. GALATI: More specifically, Mr. Fay,
2 specifically, just to go through cultural, since those
3 were an issue. Cultural 1 is completed and submitted and
4 been approved and Cultural 2 was the old version of the
5 other project had been submitted earlier. The revision, I
6 believe, was submitted today. As well as Culture 3, which
7 is training qualifications of training, that also will be
8 submitted today. The old version was submitted in April,
9 so there's some minor revisions to these.

10 So I guess the commitment we're looking for is
11 that recognize that there were submittals earlier and
12 we're submitting something new, if staff could commit to
13 getting those two together and say, hey, I've already
14 taken a look at this, this is how it's changed. They
15 probably can turn it around quicker, and, again, then as
16 if they had seen a brand new plan.

17 What really has changed from the perspective of
18 the cultural is the section of the line on the new
19 pipeline, the minor relocation of water lines but all the
20 other linear facilities in the transmission area and the
21 footprint of the facility have not changed. So we think
22 that hopefully that review process can be sped up seeing
23 that they've already -- staff has already seen 80 percent
24 of the cultural resource section of disturbance.

25 HEARING OFFICER FAY: The new location is within

1 the survey zone, correct?

2 MR. GALATI: Correct. And there was one area
3 that was resurveyed for cultural resources, which was the
4 gas pipeline, so that's really the area to be focused on.

5 COMMISSIONER MOORE: That's the only change.

6 MR. GALATI: That's really the only change from
7 the plans that they should see, and the training is not
8 going to be any different, the cultural resources.

9 COMMISSIONER MOORE: Then the same person is
10 doing the resurvey, so we've got continuity?

11 MR. SOARES: Right. And also these plans are not
12 specific to the project side or the facilities, it applies
13 to the entire project. So no matter, you know, what
14 facility we're talking about, it all falls in under the
15 same plan.

16 COMMISSIONER MOORE: Okay.

17 HEARING OFFICER FAY: Well, I guess if you can't
18 reach some agreement on that, staff's going to have to
19 have a witness to commit --

20 SENIOR STAFF COUNSEL HOLMES: I can have them
21 ready.

22 HEARING OFFICER FAY: And right now, Ms. Poole,
23 you're not anticipating cross-examination at all?

24 MS. POOLE: No.

25 HEARING OFFICER FAY: Okay. Now, as to the

1 important evidence in the sale, what is the status of
2 that?

3 MR. GALATI: Currently, the Memorandum Of
4 Agreement has been entered into between the two companies.
5 There's been a new certification of compliance issued to
6 the district and there is some due diligence period of
7 which the documents, I guess, we're anticipating that
8 those will be done in early to mid-November. But I think
9 we need some supportive --

10 COMMISSIONER MOORE: Why don't you give us your
11 name and come up with a business card. And, by the way,
12 Mr. Galati, is the MOU proprietary?

13 MR. GALATI: I assume it is. I haven't seen it.
14 I assume it is.

15 HEARING OFFICER FAY: You understand we need
16 evidence of the sale so the NOP issue can go away and we
17 need evidence of Mission's compliance --

18 MR. GALATI: Correct.

19 HEARING OFFICER FAY: -- to prove that they don't
20 have their own NOV's.

21 COMMISSIONER MOORE: And maybe the way to do
22 this, and I turn to my lawyer to ask this, but maybe
23 perhaps the way to do this would be to have a separate
24 document drawn up that iterates all of those items without
25 giving us proprietary information, something that would

1 give us confidence and the staff confidence that, in fact,
2 this is actually going to take place. It's a real deal.
3 The terms, that's none of my business, but the fact of the
4 matter is my business.

5 MR. GALATI: We did docket a letter on October
6 25th, that is a letter from Edison, stating that they have
7 executed a binding Memorandum Of Understanding and that
8 the execution of the definitive stock purchase agreement
9 is expected to occur no later than November 15th. And
10 attached to that or filed under separate cover was a
11 certification of compliance from, I believe, Southern
12 California Edison and Edison Mission.

13 So those certifications of compliance have
14 already been done and submitted to the district. And a
15 copy of that, I believe, was sent directly to the Energy
16 Commission as well.

17 MR. GRATTAN: I think we'll docket it today.

18 MR. GALATI: I think what we're looking for is
19 already going to be in the docket. We would just attach
20 those or refer to those exhibits.

21 COMMISSIONER MOORE: That may very well be
22 enough.

23 HEARING OFFICER FAY: Are there contingencies in
24 the sale -- well, if the sale is on anticipated final by
25 November 15th, you said, so by the time the Commission had

1 this before -- the full commission had this before them,
2 that would be a completed act.

3 MR. GALATI: Okay.

4 MR. GRATTAN: So a notification upon completion
5 of the due diligence and the actual --

6 COMMISSIONER MOORE: Well, I think that would be
7 prudent in any case. I mean --

8 SENIOR STAFF COUNSEL HOLMES: If I could jump in,
9 at this point, we'd also like to have some sort of
10 response from the district to the certification of
11 compliance provided. We have a letter to the district,
12 but we haven't heard from the district.

13 MR. GALATI: I imagine that that would be
14 probably done at the hearing when the district would come
15 to the DOC.

16 COMMISSIONER MOORE: Well, if they have it out
17 before that -- I mean, if they issue the letter, let's
18 just make sure that we docket it and get that part of the
19 system behind us.

20 HEARING OFFICER FAY: Ms. Holmes, do you know if
21 the staff would have any ability to advise us at the
22 evidentiary hearing on the 7th along the lines we received
23 in the past from -- the wildlife agencies have some input
24 for the district and, you know, whether they think the
25 final DOC is likely to be consistent with the preliminary

1 or if they even know enough at that point. I'm just a
2 little reluctant to leave everything for the full
3 Commission to be active on the matter, and that's the
4 first time they come in.

5 SENIOR STAFF COUNSEL HOLMES: I can certainly
6 contact the district and ask them to participate either
7 via a conference call or show up in person. I do know
8 that there has been discussion that I wasn't privy to that
9 I know about that indicates the people may be filing
10 comments on the PDOC, which I would guess means that the
11 district probably can't commit to a whole lot of anything
12 now before they have a chance to see what gets -- what is,
13 in fact, submitted, because they have an obligation to
14 respond to that in their final. But I can certainly
15 contact the district and ask them to participate on the
16 7th.

17 HEARING OFFICER FAY: Even by phone they can tell
18 us whether they can do it. They can phone in and just if
19 they have something to say, if they know anything more at
20 that point. But that would be almost a month ahead of the
21 Commission's anticipated action, so --

22 SENIOR COUNSEL HOLMES: Right. There will be two
23 issues that I'm aware of. One has to do with their
24 response to the certification of compliance for the new
25 owner. And the second is whether or not they've received

1 any -- in fact, received any comments on the PDOC and how
2 they plan to respond to them if they have.

3 Does that cover it?

4 HEARING OFFICER FAY: Yeah, I think that does.

5 MS. POOLE: I believe the comment deadline is
6 November 10th; isn't that correct?

7 MR. GALATI: I believe so.

8 MS. POOLE: So it would probably be after the
9 hearing.

10 SENIOR STAFF COUNSEL HOLMES: Right, it won't be
11 over by the time of our hearing.

12 HEARING OFFICER FAY: That's still the best we
13 can do with certain things. Take advantage of that
14 opportunity to get something on the record.

15 All right. I think before Commissioner Moore
16 came in, you mentioned you wanted to address Land Use 2.
17 And that's just argument?

18 MR. GALATI: Yes.

19 HEARING OFFICER FAY: The condition and
20 requirement.

21 MR. GALATI: That is argument requiring lighting
22 and beautification. We had submitted some comments on the
23 PDOC with an alternate way of looking at that issue and we
24 had some discussions at the PMPD conference hearing and we
25 just wanted to see where that was and what we intended to

1 do was to go ahead and submit either our comments or our
2 proposal for what would happen there as testimony on
3 declaration, but have a witness available in case the
4 Committee wanted to have some questions on that on
5 November 7th.

6 COMMISSIONER MOORE: Well, okay, and I clearly
7 might have questions on it. Let me ask you this, have you
8 made any contact with members of the community, such as it
9 is out there, to try and understand if we go ahead and do
10 something, what would be the best thing to do?

11 MR. GALATI: No, we haven't done that. And one
12 of the ways we revised the condition was to have that
13 community involvement done then. So we don't have a
14 selected project yet to do, but we wanted to give them the
15 greatest amount of flexibility of what it should be.

16 COMMISSIONER MOORE: Well, I'm certainly going to
17 be open to this. If you think about the community down
18 there, I mean there are a lot of opportunities to make
19 things better without having to spend a lot of money or
20 anything else just to make some thoughtful improvements
21 that improve the environment down there.

22 I tried to get ahold of the county supervisor
23 down there, who this may not be his biggest constituency,
24 so perhaps not focused it, but it just seemed to me that
25 there if you're thoughtful about it and you're in the

1 community there, think about what would make a difference.
2 You heard the public comments before. And I'm going to be
3 open to something creative to just try and make it a
4 little better environment down there.

5 MR. GALATI: Okay.

6 HEARING OFFICER FAY: Okay. Did you want to add
7 anything more on the certification of compliance from
8 Mission?

9 MR. BLAIR: No. I think, you know, it's -- what
10 we did is we did submit the certificates this past Friday.
11 And from our perspective everything was relatively clean,
12 and there shouldn't be any issues.

13 HEARING OFFICER FAY: Have these been reviewed
14 fairly recently by any other district?

15 MR. BLAIR: We had previously submitted on the
16 Midway/Sunset Project and so -- which was basically a
17 refresh.

18 HEARING OFFICER FAY: And this was within?

19 MR. BLAIR: And that's, I think, within the last
20 month and a half.

21 HEARING OFFICER FAY: Okay. All right. And the
22 district ruled favorably on --

23 MR. BLAIR: As far as I know they have.

24 HEARING OFFICER FAY: Okay. Good.

25 All right, it looks to me like we can certainly

1 receive everything on declaration with the possible
2 exceptions of air quality, biology and cultural resources.

3 MR. GALATI: And noise.

4 HEARING OFFICER FAY: Oh, and noise.

5 MR. GALATI: That one issue of the timing of
6 construction.

7 HEARING OFFICER FAY: I would strongly encourage
8 you to communicate with the staff and try to hammer out
9 some kind of compromise on these things, so that we don't
10 have to spend, you know, a lot of time arguing about the
11 details of the noise issue or the cultural issue if that's
12 at all possible.

13 Also, if the biology testimony doesn't involve
14 Mr. York's and it's just an expression from the agencies,
15 and his, too, can come in on declaration, I'll leave that
16 up to staff.

17 SENIOR STAFF COUNSEL HOLMES: It's my
18 understanding that he's actually been in contact with Fish
19 and Wildlife Service while we've been talking and that
20 they've indicated that the federal biological opinion may
21 actually be ready by next Tuesday, the time of hearing,
22 but that in any event they will be available to testify
23 and that they will be requiring the bird flight deflectors
24 for the entire line. So it looks as though the issue will
25 be before the Committee next Tuesday.

1 MR. YORK: We're going to meet today with the two
2 people over there that we've worked with on this project
3 and maybe the applicant to talk about, in particular, the
4 bird flight converters and the timing of the biological
5 opinion.

6 COMMISSIONER MOORE: Would you give us also when
7 you query the Fish and Game folks, because I imagine this
8 is not the last time we're going to hear this issue come
9 up. So query them to get some average costs on
10 installation per unit, so we have a sense of that, so
11 either this committee or other committees have a number
12 that they can start using in their calculations.

13 MR. YORK: Cost per mile and that sort of thing?

14 COMMISSIONER MOORE: Cost per mile, cost per
15 every 50 meters or something. But if you assume that you
16 don't do this unless you've got, on average, ten rungs of
17 500 meters each, and so now we've got some costs that we
18 can start to plug in. So let's try to understand what
19 they think they're imposing as far as costs go. The
20 applicant may have their own opinion as well, in which
21 case we'll potentially get another number, but let's, at
22 least, get a base line.

23 MR. GRATTAN: I would like to request that when
24 Rick solicits that information that it be broken down into
25 installing them new and retrofit, because part of our

1 problem is with the retrofit, so it would be interesting
2 to see.

3 COMMISSIONER MOORE: That's a fair question.
4 Rick, would you take that back. It will help all of us to
5 get a better handle on this.

6 Thank you.

7 HEARING OFFICER FAY: Just for the sake of
8 discussion, I would propose that we go through in the
9 order of topics listed in the applicant's prehearing
10 conference statement and we just take most of these on
11 declaration in that order and then call witnesses when we
12 get to air quality, et cetera.

13 Now, with that in mind, does anybody have a
14 timing problem, either availability of witnesses or
15 counsel?

16 It all seems doable to me during the day on the
17 7th. I am sensitive to people's needs. Obviously, none
18 of us want to go late and it's election day, and so I'm
19 really trying to explore ways to be as efficient as we
20 possibly can.

21 SENIOR STAFF COUNSEL HOLMES: I recommend
22 absentee ballots.

23 (Laughter.)

24 HEARING OFFICER FAY: That might be a good idea.

25 COMMISSIONER MOORE: A little late for some of

1 us, but for others. Anybody have any conflicts that
2 anyone knows about?

3 SENIOR STAFF COUNSEL HOLMES: Staff has no
4 conflicts.

5 COMMISSIONER MOORE: Okay.

6 MR. GALATI: We have no conflicts.

7 HEARING OFFICER FAY: Good. Okay. Anything else
8 that any of the parties would like to address at this time
9 about getting through the hearings in a timely manner?
10 Are you getting response from staff or, I mean,
11 people are answering their phones?

12 MR. GRATTAN: Staff has been wonderful as always.

13 HEARING OFFICER FAY: So you have reason to think
14 that you could address some of these before the hearing?

15 MR. GALATI: Absolutely.

16 HEARING OFFICER FAY: Okay.

17 MR. GRATTAN: Yeah, we want to.

18 HEARING OFFICER FAY: Right. We'd just like to,
19 you know, hammer out a compromise, if there's something
20 that they can live with. If they feel it absolutely
21 violates some professional judgments or rules or whatever,
22 then they'll be here and talk to us.

23 COMMISSIONER MOORE: And on the other agencies
24 topic, I mean this is serious business. You may get by
25 it, but someone else is going to get trapped by it in the

1 end. So when you run into those, kind of, road blocks
2 where there's a delay or a difficulty, would you let the
3 hearing officer know so that I'm aware of it and the
4 background.

5 MR. GRATTAN: Let me ask a question with that
6 regard. And that is the green teams. Don't go there.
7 I'm getting the don't go there look. But that's -- can
8 they be of any assistance in this? I mean, we all do --
9 you know, we all have our on-the-timing issues, we all
10 have our contacts and we all, you know, make our requests.

11 COMMISSIONER MOORE: Did you ever see the old
12 cartoon that had different styles of swings off the limb
13 of a tree, where there was --

14 MR. GRATTAN: Yes.

15 COMMISSIONER MOORE: And the one that was
16 designed by a committee, that product. Well, think about
17 the green team as a committee.

18 HEARING OFFICER FAY: The seat is kind of missing
19 there.

20 MR. GRATTAN: My understanding was they decided
21 that they wouldn't involve themselves in individual
22 projects, which I --

23 HEARING OFFICER FAY: I don't know if that's
24 true, but I did hear that they were advised that anything
25 that they did was subject to the Open Meetings Act,

1 noticing requirements and so on.

2 MR. GRATTAN: I just wanted to raise the issue to
3 make sure we were --

4 COMMISSIONER MOORE: Consider it raised,
5 changing, but raised.

6 (Laughter.)

7 HEARING OFFICER FAY: That's possible that that
8 concept was oversold.

9 Anything further then?

10 MR. GALATI: Other than the applicant would,
11 again, like to thank the Hearing Officer and the Committee
12 as well for putting this schedule together, one that we
13 know is very taxing, both to staff and to the intervenors
14 and the applicant. We're thankful for that commitment to
15 the project.

16 HEARING OFFICER FAY: Yeah. There is one other
17 thing that just occurred to me. I checked with our
18 paralegal who handles the transcript contract, and the
19 fastest expedite turn around time is supposedly four days.
20 And after the 7th, you've got two days before a State
21 holiday on November 10th. So you not only have some
22 processing challenges, but you've got some bad luck. So
23 if it's four working days, we wouldn't have anything until
24 the end of the 14th.

25 MR. GRATTAN: Is the transcript service, they're

1 not State, though, right? They're private sector?

2 HEARING OFFICER FAY: Independent contractor.

3 MR. GRATTAN: They can --

4 HEARING OFFICER FAY: You know, I don't know
5 exactly what they can do pursuant to their contract. I
6 tried to explore this and that's what I was told that, you
7 know, State holidays affect them too, in terms of turn
8 around time. And if you want to call Peters and chat with
9 them about this, maybe they can tell you directly what the
10 rules are as far as they see them.

11 MR. GRATTAN: We'd be pleased to do that and
12 we've done that in the past. Since we are not the Energy
13 Commission and they don't have a contract with us, I mean
14 they'll explain things, but you mean --

15 HEARING OFFICER FAY: You can tell them --

16 MR. GRATTAN: The instruction of the order or
17 whatever has got to come from the Energy Commission.

18 HEARING OFFICER FAY: If they need to -- if they
19 could deliver at an earlier time and it falls on a holiday
20 or the weekend, I can be available to receive it.

21 COMMISSIONER MOORE: And so will I. We're
22 committed to make this work.

23 MR. GRATTAN: Let me ask this question maybe we
24 can get into a delicate area here, but if it's a question
25 of money for overtime work, I think the applicant would be

1 more than willing to do --

2 HEARING OFFICER FAY: I don't think it is. I
3 explored that a little bit. And I think even if it was,
4 it's not easy to cover that. The way the contracts go and
5 all that is rather cumbersome, but you might want to
6 explore that.

7 MR. GRATTAN: We have one other issue, I think,
8 we need closure on and that's whether we're going to have
9 an air quality workshop before the hearing.

10 SENIOR STAFF COUNSEL HOLMES: I'm not sure.

11 HEARING OFFICER FAY: We're scheduled to start
12 the hearing at 9:30 in the morning. Now, do you need to
13 steal some of that time?

14 MR. GRATTAN: What do you think, Scott? I would
15 prefer --

16 COMMISSIONER MOORE: We can push it back an hour,
17 if you want.

18 MR. GRATTAN: We'll meet with the Air Resources
19 Board staff in the meantime and try --

20 HEARING OFFICER FAY: The notice has gone out,
21 but we can certainly, and have in other cases too, just
22 hold off taking evidence and announce that the Committee
23 will go off and do something else for an hour and give you
24 folks time to hammer out solutions.

25 MR. GALATI: Yeah, and I think that would be

1 helpful. I think one hour ought to do it.

2 COMMISSIONER MOORE: Okay.

3 HEARING OFFICER FAY: Fine. We'll anticipate
4 that.

5 MR. HAUSSLER: And perhaps I should mention --
6 this is Bob Haussler of the Environmental Protection
7 Office of the Energy Commission. We are aware that the
8 ARB does have some concerns with the PDOC. They will
9 probably be meeting with the applicant and may be meeting
10 with the district. We certainly will be following this
11 closely. We realize that there could be changes coming
12 from different directions.

13 COMMISSIONER MOORE: Well, that makes Mr.
14 Grattan's suggestion all the more timely.

15 HEARING OFFICER FAY: I appreciate that staff has
16 tried an alternative approach on this. And if that is
17 completely unworkable for the project, then maybe there
18 are still other alternatives that could move in the
19 directions of the State policy, but obviously you need to
20 explore that before the evidentiary hearing. You don't
21 want to bottle up the record and get a revision that the
22 full commission can consider. If all this stuff comes in
23 at the business meeting, it's not good.

24 MR. GALATI: Right.

25 HEARING OFFICER FAY: It gets very confusing.

1 MR. HAUSSLER: Well, from staff's standpoint, we
2 realize this is a unique time and a unique project and we
3 will be willing to work with both the applicant and the
4 ARB and the district on this and see what we can come up
5 with. There are outstanding concerns, which we understand
6 there may be, there may not be.

7 HEARING OFFICER FAY: All right.

8 Anything further then?

9 Okay, thank you all.

10 (Thereupon the prehearing conference
11 for the Sunrise Power Project was
12 adjourned at 10:55 a.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing prehearing conference was reported in shorthand
7 by me, James F. Peters, a Certified Shorthand Reporter of
8 the State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said prehearing
12 conference nor in any way interested in the outcome of
13 said prehearing conference.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 6th day of November, 2000.

16

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19

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